

## MEETING RECORD

**NAME OF GROUP:** PLANNING COMMISSION

**DATE, TIME AND PLACE OF MEETING:** Wednesday, October 20, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

**MEMBERS IN ATTENDANCE:** Russ Bayer, Steve Duvall, Linda Hunter, Gerry Krieser, Patte Newman, Tommy Taylor, Greg Schwinn and Cecil Steward (Barbara Hopkins absent); Mike DeKalb, Steve Henrichsen, Rick Houck, Jennifer Dam, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

**STATED PURPOSE OF MEETING:** Regular Planning Commission Meeting

Vice-Chair, Russ Bayer, called the meeting to order and requested a motion approving the minutes for the meeting held October 6, 1999. Motion to approve made by Schwinn, seconded by Hunter and carried 6-0: Bayer, Duvall, Hunter, Newman, Taylor and Schwinn voting 'yes'; Krieser and Steward abstaining; Hopkins absent.

### Election of Chair and Vice-Chair

October 20, 1999

Schwinn nominated Russ Bayer as Chair, seconded by Krieser. There were no other nominations. Russ Bayer was elected Chair by unanimous vote.

Bayer announced that there are two candidates for Vice-Chair, Greg Schwinn and Cecil Steward. Duvall made a motion to nominate Schwinn and Steward for Vice-Chair, seconded by Hunter. By secret ballot, Schwinn was elected Vice-Chair.

**CONSENT AGENDA**  
**PUBLIC HEARING & ADMINISTRATIVE ACTION**  
**BEFORE PLANNING COMMISSION:**

October 20, 1999

Members present: Bayer, Duvall, Hunter, Krieser, Newman, Taylor, Schwinn and Steward; Hopkins absent.

The Consent Agenda consisted of the following items: **CHANGE OF ZONE NO. 3211; COUNTY SPECIAL PERMIT NO. 172; COUNTY SPECIAL PERMIT NO. 173; PRELIMINARY PLAT NO. 99015, TIMBER VALLEY; FINAL PLAT NO. 99017, HIGHLANDS NORTHWEST 1<sup>ST</sup> ADDITION; FINAL PLAT NO. 99029, PINE LAKE HEIGHTS SOUTH ADDITION; FINAL PLAT NO. 99032, PINE LAKE HEIGHTS 18<sup>TH</sup> ADDITION; FINAL PLAT NO. 99033, COUNTRY VIEW ESTATES 2<sup>ND</sup> ADDITION; AND ANNEXATION NO. 99020.**

**Item No. 1.1, Change of Zone No. 3211; Item No. 1.4, Preliminary Plat No. 99015; Item No. 1.2, County Special Permit No. 172; and Item No. 1.3, County Special Permit No. 173** were removed from the Consent Agenda and scheduled for separate public hearing.

Steward moved to approve the remaining items on the Consent Agenda, seconded by Schwinn and carried 8-0: Bayer, Duvall, Hunter, Krieser, Newman, Taylor, Schwinn and Steward voting 'yes'; Hopkins absent.

Note: This is final action on the Highlands Northwest 1<sup>st</sup> Addition, Pine Lake Heights South Addition, Pine Lake Heights 18<sup>th</sup> Addition and Country View Estates 2<sup>nd</sup> Addition final plats, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

**COUNTY SPECIAL PERMIT NO. 172**  
**FOR A WIRELESS COMMUNICATIONS TOWER**  
**ON PROPERTY GENERALLY LOCATED AT**  
**N.W. 126<sup>TH</sup> STREET AND W. HOLDREGE STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 20, 1999

Members present: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer; Hopkins absent.

Planning staff recommendation: Conditional approval.

This item was removed from the Consent Agenda and had separate public hearing at the request of the Planning staff.

Mike DeKalb of Planning staff advised that he has been in contact with the Seward County

Zoning Administrator and there is another tower provider called Unisite that had located a tower site south of the Interstate just across the county line. Seward County handles towers as a conditional use, and the Unisite tower site has now been moved north of the Interstate so it would be just one mile west of this proposed special permit. Under the staff's review criteria, if there is a tower within a mile of a proposed tower site, the applicant must demonstrate why they cannot collocate. Therefore, staff is now recommending that this special permit be deferred to see what happens with the location of the Unisite tower and the possibility of collocation.

Hunter inquired whether either Unisite location is in the Capitol View corridor. DeKalb advised that County Special Permit 172 is not in the Capitol View Corridor; the location of the Unisite tower in Seward County south of the Interstate was in the Capitol View Corridor and that is why they changed the location.

DeKalb suggested that a deferral by the Planning Commission would leave it up to the applicant to talk with Unisite about the possibilities of collocating.

Steward inquired about the handling of FAA approval. Why is the Planning Commission put in the position of approving the site before approval is received from FAA? DeKalb explained that FAA approval is a condition of the special permit—they must have all other federal and state approval or licensing approval and county board approval before receiving a building permit.

### Proponents

**1. Ken Weber**, private consultant for **Nextel Communications**, 14324 U Street, Omaha, testified in support. He has talked with Mr. DeKalb and Nextel will make application with Unisite for collocation. At this stage, Nextel is willing to accept the proposal to defer. The only concerns are that the Unisite tower is shorter than the proposed Nextel tower, so there will need to be some additional engineering done to determine if they have to raise their tower; Nextel is willing to pursue it as far as they can. There is not really a viable way to force companies to work together. He is not familiar with Unisite. The tower Nextel proposes would be built for multiple carriers. The overall scheme for Nextel is that they are building a network from Cedar Rapids, Iowa, all the way to Seward.

Hunter asked how many sites Nextel is projecting. Weber stated that he is responsible from Atlantic, Iowa, to Seward, to Beatrice to Rockport. They are currently working on 48 sites out of the Omaha market to cover that entire area.

Weber acknowledged that Nextel will attempt to collocate wherever possible. That is the

least expensive alternative. In fact, Nextel is currently working to collocate on three SBA towers between here and Omaha. In Omaha, they are working with Alltel and ATS Paging Company. There are a large number of collocations being pursued wherever possible.

Hunter suggested that co-ownership of the towers seems like a real possibility rather than leasing space. The Commission is put in a very hard position because everyone wants their own tower. Weber responded, stating that the tower will be built by a company called Spectrasite, a national tower providing company, which is a company like Unisite, and they currently have agreements with Sprint and AT&T. Hunter commented that in light of competition it seems like it is a lot more business smart to be paying for one-third of a tower than to pay for 48 towers. So if there is some incentive to share the costs of construction, maybe that is an avenue that can be approached.

There was no testimony in opposition.

Steward believes this is new knowledge that we have tower companies, not cellular companies, building these towers. When the technology changes, do we have any provisions to have these companies take these towers down? DeKalb advised that staff is working on this legislation. There are some locations where we are requiring bonds for removal, but we have not been putting that provision in at this time. This is a long term question.

Jennifer Dam of Planning staff advised that staff is working on the proposed new tower ordinance and she will be making a presentation at the November 17<sup>th</sup> lunch meeting of the Planning Commission. There is a Town Hall meeting scheduled for November 15<sup>th</sup> regarding the new tower ordinance, She anticipates that the draft will be available about a week prior to the Town Hall meeting. Staff is prepared to address the removal of the towers in the new ordinance.

Duvall moved to defer for two weeks, seconded by Krieser and carried 8-0: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Hopkins absent.

**CHANGE OF ZONE NO. 3211**  
**TEXT AMENDMENT TO SECTION 27.69.240**  
**OF THE LINCOLN MUNICIPAL CODE**  
**TO INCREASE THE AREA OF MENU BOARD**  
**GROUND SIGN.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**     October 20, 1999

Members present: Bayer, Schwinn, Steward, Newman, Hunter, Krieser, Duvall and Taylor; Hopkins absent.

Planning staff recommendation: Approval.

This item was removed from the Consent Agenda and scheduled for separate public hearing at the request of Commissioner Steward.

Proponents

1. **Bill Austin**, appeared on behalf of **McDonald's Corporation**. This request is to allow the McDonald's to comply with the new national sign package they have adopted which dictates larger menu boards for their locations, from 20 sq. ft. to 45 sq. ft. for two signs, or from 32 sq. ft. to 50 sq. ft. for one sign. They believe the signs provide better and more understandable graphics and will be easier to read. Austin submitted that his proposal meets the general requirements contemplated at the time the sign ordinance was adopted. These signs will not be in front yards or violate any site distance requirements. The effect of this requested change will be minimal. Austin submitted pictures of the proposed menu board sign.

Steward understands the national design standards that a corporation like McDonald's puts out, but he believes they are put out as intended guidelines but not in every case do they expect to have the community accept their guidelines. This is the same for building design. What do you anticipate McDonald's response to be if this is not passed? Austin reply that the simple answer is that if the sign ordinance isn't changed, they will have to continue to comply with the ordinance as written. It will cause some difficulty with their franchises here in Lincoln because it will impose a greater burden or cost in meeting the standards of the corporation if they cannot use the signs being used nationally by the corporation.

There was no testimony in opposition.

Steward stated that his concern is not so much that we are being asked to revise this by any particular party—it could be anyone. His concern is the precedence that it potentially establishes and we've turned down numerous requests to increase the square footage for other yard signs and site located signs. He believes that this does set a precedence and opens up the whole community. Mike DeKalb of Planning staff agreed, however, relative to menu board signs only. This is a very specific allocation of additional signing. These

signs are not allowed in the front, side, rear or front yard setbacks. They are specifically oriented to the drive-thru window. To accommodate the presale sign, they needed to increase the signage. It is internally oriented, not oriented to the street, and is oriented away from abutting neighbors. It may move cars through faster. It is for menu boards only.

Duvall commented that the public has become increasingly more visually oriented for instructions, etc.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** October 20, 1999

Steward moved approval, seconded by Krieser and carried 8-0: Steward, Krieser, Taylor, Hunter, Schwinn, Bayer, Newman and Duvall voting 'yes'; Hopkins absent.

**PRELIMINARY PLAT NO. 99015**

**TIMBER VALLEY**

**ON PROPERTY GENERALLY LOCATED**

**AT S.W. 31<sup>ST</sup> STREET AND WEST "A" STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:** October 20, 1999

Members present: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer; Hopkins absent.

Planning staff recommendation: Conditional approval.

This item was removed from the Consent Agenda and had separate public hearing at the request of Commissioner Steward.

There was no testimony by the applicant, in support or in opposition.

Steward referred to the recommendation by the Parks Department and staff's commentary about "standard practice" with regard to green space. How do we get this coordinated better and how do we assure, if not on this request, but on others, that we are getting adequate green space in proximity to development? Steve Henrichsen of Planning staff advised that currently, it has been on a subdivision-by-subdivision basis. Typically, the city has entered into negotiations with the developer on trying to obtain land. But, Parks believes it has limited funds for advance acquisition so in many cases we have used the community unit plan, which has a requirement for a recreation plan, as a way to negotiate some amount of open space with developers. In this case, where it is a straight preliminary plat, there is no particular requirement for open space. What can be done? This is certainly something the staff can further discuss with Parks, but it would probably take a change to the subdivision ordinance that might require some dedication of park space or contribution of funds in lieu thereof, or increasing the Parks Department land acquisition

fund. Steward further pointed out that it is not the large PUD that he is concerned about. It is these smaller incremental developments. As they develop incrementally, we give the same treatment to each developer and end up with large neighborhoods without adequate green space. Steward explained that he wanted to use this application as an opportunity to request that the staff take a look at that issue.

Hunter asked for comment by staff on the drainage issues. Dennis Bartels of Public Works advised that in general, he will require the developer to show that the detention will match the post- and pre-development condition within a few percent so that there is not a big discrepancy. Before it gets forwarded to the City Council, the Planning Commission approval says they have to satisfy the Public Works requirements and that is one of the changes he wants made to this plan--to meet the subdivision ordinance requirements for detention. He won't approve anything unless the post-development and pre-development are equal or close. Hunter inquired whether the 20% increase will require a significant rearrangement of the development. Bartels would anticipate it would require some enlargement or redesign of the detention facility that they showed and may decrease the size of some of the adjacent lots. To provide the extra detention is not a significant change. It will not change the basic concept of the plat to any great degree. Worst case, they might lose a lot or have several smaller lots.

Hunter knows there is a development next to this. As these keep stacking on, does that number get bigger? Bartels explained that it is reviewed subdivision-by-subdivision. Each development is required to provide detention on their site unless they have a site agreement to collocate their detention.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 20, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, seconded by Krieser.

Newman agrees with Steward on the green space issue and she really hesitates to vote in favor. She will vote against this proposal because this issue needs to be addressed.

Motion for conditional approval carried 7-1: Duvall Schwinn, Steward, Hunter, Krieser, Taylor and Bayer voting 'yes'; Newman voting 'no'; Hopkins absent.

**COUNTY SPECIAL PERMIT NO. 173**  
**FOR A WIRELESS COMMUNICATIONS TOWER**  
**ON PROPERTY GENERALLY LOCATED**  
**AT S.W. 2<sup>ND</sup> & WITTSTRUCK ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 20, 1999

Members present: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer; Hopkins absent.

Planning staff recommendation: Conditional approval.

Proponents

1. **Ken Weber**, private consultant on behalf of **Nextel Communications**, appeared to answer questions.

Hunter stated that her comments on County Special Permit No. 172 apply to this application as well.

Weber advised that there is currently not an existing tower in the immediate vicinity for collocation. This site is on a highway corridor south toward Beatrice.

Weber noted that in working with the City of Omaha, they require an annual report from carriers as to the status of their facilities and if the tower is inactive they have a certain amount of time to remove the facility.

Bayer inquired whether Nextel is a new provider of services. Weber stated that Nextel is comparable to Sprint PCS and AT&T. Their primary business target is cross-country and construction. In addition to being a wireless PCS, they also have technology to act as a two-way radio.

Opposition

1. **Trudy Adams**, testified in opposition. She owns land at S.W. 14<sup>th</sup> & Wittstruck and they have already seen towers come in and do not want to see the ground clutter and atmosphere clutter. Our technology is so far ahead of our understanding that we do not know what is coming from the fallout. Besides that, the planning of south Lincoln is progressing so fast that she would like to see a plan put into action that would provide for areas to be green space. She would like to keep the area as rural as possible. Is there any provision for containing these towers in one area? Or limiting the amount of towers that go up and down your landscape?

Bayer explained that there is a new ordinance that is being written and that there will be a town hall meeting on November 15<sup>th</sup>.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 20, 1999

Steward moved to approve the Planning staff recommendation of conditional approval,

seconded by Duvall.

Steward shares the concern of Ms. Adams and this is, he thinks, largely what is stimulating our more careful look from a planning aspect into what we can do to better control the towers. It is a technology that has overwhelmed every community across the country. We have had to suffer wires and now towers. The control of the technology and the collocation and how we can have these not be such an intrusion in the community is of major concern. But we find ourselves in the condition that we are almost helpless to refuse the adequately located towers.

Hunter stated that she has looked very hard at the amount of towers. The reason she asks how many sites they are looking for is because the concept of having 300 of these towers around the landscape in Lincoln is not acceptable, even in a small way. She is hopeful we can address distances between, or maximum number of towers, etc.

Motion for conditional approval carried 8-0: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Hopkins absent.

**COUNTY CHANGE OF ZONE NO. 191**  
**and**  
**MISCELLANEOUS NO. 99002**  
**TO INCREASE FILING FEES FOR ZONING**  
**AND SUBDIVISION APPLICATIONS.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**     October 20, 1999

Members present: Bayer, Duvall, Hunter, Newman, Schwinn, Steward, Krieser and Taylor; Hopkins absent.

Planning staff recommendation: Approval.

Proponents

**1. Mike DeKalb of Planning staff** explained that this represents the county fee increases to match what is currently in effect now in the City. The County Board is in support. The proposed new fees match exactly what was previously approved for the City, except for County Board of Zoning Appeals. That fee was kept low because it is a very minor individual circumstance.

There was no testimony in opposition.

Public hearing was closed.

**COUNTY CHANGE OF ZONE NO. 191**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 20, 1999

Schwinn moved approval, seconded by Duvall and carried 8-0: Schwinn, Duvall, Taylor, Hunter, Newman, Krieser, Steward and Bayer voting 'yes'; Hopkins absent.

**COUNTY MISCELLANEOUS NO. 99002**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 20, 1999

Krieser moved approval, seconded by Duvall and carried 8-0: Krieser, Duvall, Schwinn, Taylor, Hunter, Newman, Krieser, Steward and Bayer voting 'yes' Hopkins absent.

**SPECIAL PERMIT NO. 1794**

**FOR A WIRELESS COMMUNICATIONS TOWER**

**ON PROPERTY GENERALLY LOCATED AT**

**445 "A" STREET.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**

October 20, 1999

Members present: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer; Hopkins absent.

Planning staff recommendation: Deferral.

Jennifer Dam of Planning staff requested a deferral until November 17<sup>th</sup> to allow the applicant sufficient time to work with the Public Works Department. This particular location was right in the way of one of the options for the A Street Overpass so they are working with Public Works to see if there is another location on that site that would be satisfactory.

Duvall moved to defer with continued public hearing and administrative action scheduled for November 17, 1999, seconded by Newman and carried 8-0: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Hopkins absent.

**SPECIAL PERMIT NO. 277G**

**and**

**SPECIAL PERMIT NO. 1802**

**TO ADD CELLULAR ANTENNA ON AN EXISTING WATER TOWER**

**ON PROPERTY GENERALLY LOCATED AT SO. 84TH AND PINE LAKE ROAD.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**     October 20, 1999

Members present: Bayer, Duvall, Krieser, Hunter, Newman, Schwinn, Steward and Taylor; Hopkins absent.

Planning staff recommendation: Conditional approval.

Proponents

1. **William Favor** testified on behalf of **Sprint PCS** in regards to Special Permit No. 1802. This is a site located on an existing water tower, quite similar to the ones demonstrated at the last Planning Commission meeting. Sprint proposes to locate at the top of the water tower. This will allow adequate space for additional carriers in the future. They will be able to utilize the entire structure to secure multiple carriers on this tower. It will not be a use of the tower that will be detracting from the existing environment. This site lends itself well to this type of antenna.

Steward asked whether there would be compensation to the city for the use of the tower. Mr. Favor responded that this water tower is currently owned by the Pine Lake SID and there is significant compensation.

There was no testimony in opposition.

Public hearing was closed.

**SPECIAL PERMIT NO. 277G**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 20, 1999

Taylor made a motion to approve the Planning staff recommendation of conditional approval, seconded by Hunter and carried 8-0: Hunter, Taylor, Steward, Schwinn, Newman, Krieser, Duvall and Bayer voting 'yes'; Hopkins absent.

**SPECIAL PERMIT NO. 1802**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**                      October 20, 1999

Newman moved to approve the Planning staff recommendation of conditional approval, seconded by Duvall and carried 8-0: Newman, Duvall, Hunter, Taylor, Steward, Schwinn, Krieser and Bayer voting 'yes'; Hopkins absent.

**STREET & ALLEY VACATION NO. 99011**  
**TO VACATE HACKBERRY LANE BETWEEN**  
**ANTHONY LANE AND HILLCREST DRIVE.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**                      October 20, 1999

Members present: Newman, Duvall, Hunter, Taylor, Steward, Schwinn, Krieser and Bayer; Hopkins absent.

Planning staff recommendation: Denial.

Mike DeKalb of Planning staff submitted letters consisting of seven signatures of abutting property owners in support of the proposal.

Proponents

1. **Bob Batt**, 608 Anthony Lane, is one of the property owners that would like to purchase the property. He testified on behalf of the applicants, Chris and Claire Haag, who are out of town. He submitted a letter from the applicants, who would like to build a garage and to do that they need a little bit more room so they would like to close the street. The area of Hackberry Lane at this time is covered with trees and grass which the property owners have been taking care of for some time, with no compensation from the County or the City. The property owners have asked for nothing and they are willing to take care of the property. This street serves no purpose. It connects Anthony Lane to Hillcrest Drive. Hackberry Lane continues through Hillcrest Drive to dead-end at and abutting the Hillcrest Country Club. It also continues to go towards an empty field which is towards the soccer fields which have had a lot of controversy. The property owners see no reason to continue that Hackberry Lane opening. It would make it easier to take care of if the abutting property owners could purchase it at a reasonable cost. This area has been open since June of 1956 and the construction of the houses began shortly after that time. There are no future plans for the use of this street. If for any reason the property owners need access or that the County or City would need access to other developments, there are the other two sides of Hackberry Lane. Closing it would control traffic in this area. There are four adjacent property owners that support this vacation along with most of the residents in this area.

There was no testimony in opposition.

Duvall noted in looking at the map that there is no roadbed. He wondered whether there have been any improvements. DeKalb concurred that there is no roadbed and there have been no improvements. In 1956, when this was platted, the developer was not required to bond or build.

But, Steward inquired whether the right-of-way extends east and west to the other adjacent property lines. DeKalb's response was that this is public right-of-way that does exist and is owned by the County. Steward commented that other than the private houses on the east, then the property becomes Hillcrest Country Club to the east. Therefore, for any potential future connection to another subdivision, we are really talking about a potential to the west. DeKalb believes we are talking about potential both ways. There is a golf course on the east side, and we have had several golf courses convert to subdivisions. If the Stevens Creek area is developed, it could choose to convert. This is the staff's concern--to provide access to the east. The soccer field land to the west could also convert and this is the only road existent east and west in that entire mile section.

Steward asked whether we have a design standard that limits distance between cross pattern roadways for fire access and emergency vehicle purposes. DeKalb responded, stating that this does line up and there are no offset violations. The modification to the subdivision ordinance is that this would be in excess of block length for street and pedestrian easements. It does violate the current subdivision standards.

Bayer clarified that the issue from staff's perspective is that in the future, the land to the west owned by LPS, and the land to the east which is the golf course, could some day convert into residential and that the desire of staff would be to have a link from the land to the west and the land to the east. DeKalb concurred.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**                      October 20, 1999

Duvall moved to approve the street vacation request, seconded by Bayer.

Taylor wonders about the likelihood of that land being necessary for access in the future. Duvall thinks it's a real stretch. But, Newman noted there is no access road at the half-mile corridor. It is not good planning. Hunter thinks it could create a problem sometime down the road by vacating it.

Steward is concerned about the planning principle. We had an approved plat with the road that was not constructed. There was a logic when the plat was originally approved in this

manner and the fact that the adjacent properties have not developed at this point does not mean that they will not. He does not wish to put the city in a box violating the block length.

Bayer observed that none of us can see the crystal ball in the future. His concerns stem with the fact, at what point is the exit out of the neighborhood? If someone lives to the west, which goes all the way to "O" Street with exit into the Indian Hills area and goes to "A" Street; and with the Country Club to the east, from "O" to "A", and then to the 320 acre privately held tract just to the east, why would a person exit from either neighborhood and where would they go? He clearly wants the access, but he does not believe eliminating this little stub is a concern. This connects two roads that are back yards to each other. Steward asked Bayer about from the west to the east to the golf course. Bayer would not want that closed.

Motion for approval failed 2-6: Bayer and Duvall voting yes; Steward, Schwinn, Hunter, Newman, Taylor and Krieser voting no; Hopkins absent.

Schwinn moved to deny, seconded by Steward and carried 7-1: Steward, Schwinn, Hunter, Newman, Taylor, Krieser and Duvall voting 'yes'; Bayer voting 'no'; Hopkins absent.

**WAIVER OF DESIGN STANDARDS NO. 99011**  
**TO WAIVE THE PEDESTRIAN SIDEWALK ON**  
**PROPERTY GENERALLY LOCATED AT**  
**NO. 23RD & ATWOOD CIRCLE.**

**PUBLIC HEARING BEFORE PLANNING COMMISSION:**    October 20, 1999

Members present: Steward, Schwinn, Hunter, Newman, Taylor, Krieser, Bayer and Duvall; Hopkins absent.

Planning staff recommendation: Denial.

Proponents

**1. Don Hoegemeyer** stated that he had every intention to put this in. He had the forms set and one of the members of the homeowners association called and asked him to delay. It is his understanding that Annette McRoy of the City Council, Harry Kroos of the Sidewalk Department and Dennis Bartels of Public Works all agreed that this pedestrian way should be waived. Therefore, Hoegemeyer has requested the waiver. At that time, he took out the forms, thinking that this would be approved, put in a sprinkler system and sodded it.

**2. Don Eisele**, 5656 Enterprise Drive, President of Autumn Wood Homeowners Association, testified in support. He looked at the forms and could not believe what he was seeing. Hoegemeyer informed Mr. Eisele that this pedestrian way was in the plans and he was required to put this pedestrian easement in. Eisele talked with Ms. McRoy of the City Council, who made some calls to others in the City and they agreed to ask Hoegemeyer

to hold up. McRoy made the calls and basically Hoegemeyer was told that they did not need to construct the pedestrian easement. The place designated for this sidewalk is very, very steep, with a 3-to-1 grade. Eisele provided pictures of the grade. This is a safety concern. The majority of the people that will use it are 55 years of age and older, most older, and this sidewalk, even if it had a little bit of gravel on it, would be just as slick as the ice would be in the wintertime. It would be a potential hazard every day of the year. It is really just an accident waiting to happen. The homeowners association would like very much for the Commission to approve this waiver because it is more of a danger than assistance. There is another sidewalk within one block that gets down to the same area. If for some reason this sidewalk must be constructed, Eisele would like to address the Commission at that time because there are other alternatives. Right now, they don't want the sidewalk and they don't need the sidewalk.

Bayer clarified, however, that if the sidewalks was put in, older people would use it. Eisele concurred, because Atwood is part of Autumn Wood. However, he assured that some of the people that saw it said they would never use it. Autumn Ridge north of Autumn Wood has a lot of families that would love this type of thing for bicycles and there is a flow liner right at the bottom and it would be dangerous. There is sidewalk all the way around the circle. In Linridge, there is a sidewalk down to the Commons area.

There was no testimony in opposition.

Steward inquired of staff as to the 3-to-1 slope condition and safety and what we do for an alternative to satisfy the neighbors. Dennis Bartels of Public Works did not know what the slope was on the ground. He looked at the grading plan and it was probably in excess of a 15% slope which gets relatively steep for a sidewalk. The Sidewalk Department and Public Works Director did not think there was a practical way to reduce the slope at that location. He also looked at it in regard to the older Tabitha neighborhood. It didn't appear to be part of a major system that connected the public sidewalks. It appeared that the main purpose was just access to this commons area and not part of a connecting system between neighborhoods. The Sidewalk Department recommended approval of the waiver in order to get a safe sidewalk.

Steward wondered whether it might be possible to do a series of ramps and landings. Bartels stated that due to the length of the slope, he would think the only practical thing would be to put steps in.

Bayer asked if this sidewalk would lead to a drainage ditch. Bartels stated that his research was that it did not lead to another public sidewalk. Rick Houck of Planning staff noted that there is sidewalk developed to Tabitha on the east side of the drainage ditch. The approved preliminary plat and community unit plan of Autumn Ridge showed this sidewalk going down to the drainage ditch with a grid. It is a private trail system. Bartels indicated that there is no easement on the sidewalk to which to connect. Houck confirmed that the Planning staff remains opposed to the waiver for the reason that there was no

discussion with staff relative to eliminating or changing to another type of recreational facility. If the developer had requested a meeting, the staff would have been happy to discuss alternatives such as a sidewalk at a different location or other type of recreational facility.

Hunter wondered whether it would be worthwhile to postpone this to give them the opportunity to discuss alternatives with the staff.

Response by the Applicant

Hoegemeyer clarified that he was not the developer. He bought the lots after they were developed and he had every intention to put in the sidewalk. The only reason he didn't put it in is because of what he was told. He assumed it was all right to not put in the sidewalk and he went ahead and put in the sprinkler system. This is the only easement that was allowed in this cul-de-sac for the sidewalk.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 20, 1999

Taylor moved to defer until either the developer or the affected owners can get with staff to figure out some other solution, seconded by Newman.

Taylor requests that the citizens affected get together with the city staff at least to see if there is any other alternative, and then come back before the Commission. He wants to support what the citizens want if there are no other alternatives.

Schwinn asked the applicant if he would rather the Commission go ahead and approve or deny the waiver so that it can move on to City Council for Annette McRoy to deal with. Hoegemeyer wants to do whatever is right. He spent \$700 getting the forms up and ready to pour, and now he has put in a sprinkler system. Wherever they go in that cul-de-sac, he has sprinkler system installed. Anyplace the sidewalk goes, he will have to get an easement on someone's private lot. He does not know what the alternative could be.

Steward stated that he will respectfully vote against the motion to defer because what we have here is one city department trying to respond to the practical circumstances, another city department trying to protect the standards, and they are both acting in good faith. From the testimony he has heard, he doesn't believe there is an "on the ground" practical solution that would be acceptable under the current circumstances. If this sidewalk were a sidewalk along several properties in the circle, or if it were a major thoroughfare sidewalk, he would feel differently, but with it going through an outlot as a convenience connector, he thinks the Commission should pass on it one way or the other and let the developer take care of the next step.

Hunter thinks we should give consideration to what the thought was for this sidewalk to begin with. If it doesn't go in, and if elderly people don't want to use it, is it still going to serve a purpose? Obviously, it was intended to be a connector with a cross-over bridge to the other development and probably to prevent people from trafficking across someone's lawn.

Motion to defer failed 3-5: Newman, Taylor and Duvall voting 'yes'; Schwinn, Steward, Hunter, Krieser and Bayer voting 'no'; Hopkins absent.

Taylor moved to deny the waiver, seconded by Newman and carried 8-0: Bayer, Duvall, Hunter, Newman, Krieser, Steward, Schwinn and Taylor voting 'yes'; Hopkins absent.

**WAIVER OF DESIGN STANDARDS NO. 99013**  
**TO WAIVE SIDEWALK AND STREET TREE REQUIREMENTS**  
**ON PROPERTY GENERALLY LOCATED AT**  
**S.W. 27TH STREET AND WEST "O" STREET.**  
**PUBLIC HEARING BEFORE PLANNING COMMISSION:**     October 20, 1999

Members present: Bayer, Duvall, Hunter, Newman, Krieser, Steward, Schwinn and Taylor; Hopkins absent.

Planning staff recommendation: Denial of the waiver of sidewalk requirements along S.W. 27<sup>th</sup> Street and denial of the waiver of street trees along West "O" Street.

Proponents

**1. Mike Johnson of Olsson Associates**, appeared on behalf of the applicant. This applicant has an approved plat. The developer wrote a check to the City in the amount of \$3,420.00 to cover the street trees and sidewalks, which was cashed by the City Clerk. This is an attempt to get at least half of that money released. Half of the sidewalks are in place and half of the trees are in place. We do not know when the owner plans to do something with that lot; it has been sitting vacant for a number of years. When he does

something with that lot, Johnson suspects he would have to come in and do a use permit or something and at that time he could be required to do landscaping and build additional sidewalks. The City will have another opportunity to get those items.

**2. Mike Morosin** pointed out that what the City has done in the past that is amenable is to attach an amendment that at the appropriate time when the person comes forward that is going to finish this lot that they not object to the sidewalk and street trees being put in. Bayer believes this is included in the staff recommendation.

There was no testimony in opposition.

Bayer inquired whether the condition that the owner not object to future installation of sidewalks could also be applied to the street trees. And, does this recommendation release the bond money (which is outside the control of the Planning Commission anyway). Rick Houck of Planning staff explained that the condition where the owner agrees not to object to the installation of sidewalks in the future does not apply to the street trees. Public Works does their paving improvement districts and the sidewalk district is usually included in the paving district.

Rick Houck viewed the site and believes there is a definite walking path from the corner of the trucking terminal to the motel. Thus, there is pedestrian traffic in the area and that is clearly trespass. They are not going across public property or an easement. It is more appropriate to install a sidewalk along 27<sup>th</sup> Street and to at least encourage the truckers to get to the motel in the correct way.

Relative to the street trees, Houck sees no reason to not require them. The staff is not asking for street trees on the corner lot, but only the required street trees in front of the motel. The motel was completed and has been in operation for many years.

#### Response by the Applicant

Johnson wants to make sure the money they have posted does not include money for the existing sidewalk and trees. Houck suggested that the developer could request today release of the sidewalk surety and the street tree surety for the materials that are already in place. Johnson stated that this is his desire. This requires release through Public Works and the Parks and Recreation Department. But, Johnson stated that both departments acknowledge that half of the work is done.

Rick Peo, Chief Assistant City Attorney, approached the Commission. He believes that Johnson feels that the conditions of the plat required the installation of sidewalks both along "O" and S.W. 27<sup>th</sup> Streets and he bonded for that. The question is whether the amount of money paid was actually just for the 27<sup>th</sup> Street sidewalk, which has not been built, or did it include also building the sidewalk on "O" Street, which is already there. Peo suggested that the staff recommendation is not denial of the entire application, but just a denial of the waiver of sidewalks on 27<sup>th</sup> and waiver of street trees on "O" Street. If this means they do not have to put sidewalks on "O" and street trees on 27<sup>th</sup>, then that money could be released because that is no longer required to be bonded for. The Commission is not releasing money by this action—just the condition of approval requiring the sidewalk and street trees on certain streets. He can only get a certain percentage of the sidewalks waived based on how much has been done. Street trees have to be 100% installed before they can get any releases. They could not get any of the street tree money released based on partial performance. Again, Peo noted that the Planning staff recommendation recognizes the sidewalks on "O" Street and the street trees on 27<sup>th</sup>.

Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:** October 20, 1999

Steward moved to approve the staff recommendation of denial, seconded by Newman.

Steward believes that one of the objectives of our planning process is to improve steadily and at every opportunity at this entrance into the city. He does not believe that can be done by continuous waivers and treating it as an industrial district. He also notes that both the adjacent properties apparently are in the hands of this applicant, thus, if and when plans are made and plats are filed, then the patterns will have been set and those developments should be treated exactly like these in that they should meet our standards.

Motion to approve the Planning staff recommendation to deny the waiver of sidewalk requirements along S.W. 27<sup>th</sup> Street and to deny the waiver of street trees along West "O" Street carried 7-1: Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Duvall voting 'no'; Hopkins absent.

**COMPREHENSIVE PLAN CONFORMANCE NO. 97002**  
**TO DECLARE SURPLUS PROPERTY;**  
**CHANGE OF ZONE NO. 3198;**  
**SPECIAL PERMIT NO. 1786, BLACK FOREST ESTATES COMMUNITY UNIT PLAN;**  
**and**  
**PRELIMINARY PLAT NO. 99020, BLACK FOREST ESTATES.**  
**CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:** October 20, 1999

Members present: Bayer, Duvall, Hunter, Krieser, Steward, Schwinn, Taylor and Newman; Hopkins absent.

Steve Henrichsen of Planning staff submitted additional information for the record, including:

- a memo from the Planning Department summarizing why staff believes the neighborhood roadway connection is required;

- a letter from Terry King opposed to the elimination of the street connection to Colonial Hills;

- a letter from Beth Morgan with concerns about the traffic being based on 270 units, where only 44 are proposed--important to note that none of the people who spoke in favor of the street connection stand to gain anything financially; most people want the previous promise kept; she felt that majority of the people in Colonial Hills are in favor of the street connection; and

--a letter from Pamela Walter opposed to having the street connection as a resident of Colonial Hills or the development of any multi-family units or motels on the property.

### Proponents

**1. Rob Otte** testified on behalf of the applicant. They have agreed to disagree with the staff. The staff has seen proposals for this project for over three years, and he thanked everyone involved. There may be those who expect him to rail against the staff, but when you are angry with somebody you better make sure they don't buy their ink by the barrel. Mr. Otte was presented with the staff's three-page memo about noon today. This project has been in the works for 7 months, but he cannot respond to all those comments set forth in that memo on such short notice. We agree to disagree. It is this applicant's belief, as expressed before, that the project stands on its own merits. When Jim Hille used the "new urbanism" concept, they looked hard at making that connection, but with the proximity to Dr. Carveth's house and with the neighbors moving into the neighborhood, it is just not a good idea. He appreciates that there might be a need on Elkcrest, but the correction of that need should not be borne by one individual landowner. Staff argues that there is no other possible relief for Edgewood. This is not true. There is a connection that could be made to Edgewood and there is a connection that can be made to 56<sup>th</sup> Street. Otte displayed a picture of the area where Dogwood is the street immediately south of Elkcrest. Dogwood Circle is immediately north of Edgewood and goes out onto 56<sup>th</sup> Street. If the city was planning and trying to solve problems on Elkcrest, one would have thought we would have heard at least something about Dogwood.

Otte went on to state again that the project stands for itself. If you make the street connection, do you just drag traffic through here and make problems on Old Cheney Road? Yes. There are already problems on Old Cheney Road. Additionally, we need to respect owners like Jeff McCullough who just moved onto Tanglewood. He did not know the city planned a road there. The streets have been in for 25 years. He ventures that planning staff cannot cite one other instance where a subdivision has been in for 25 years and the city breaches through a street against the wishes of a developer to make a connection. This is not good planning and this has never happened. Dr. Carveth has been there for a long time. Those streets have been there for a long time. It is unfair to saddle those residents with that kind of burden.

Otte submitted that the characterization made by Terry King's comments are inaccurate. He appreciates that Mr. King has a nice house in Hickory Crest, and he has his interest to protect, but his letter mis-characterizes this developer's comments when he developed that area.

Again, if the city wants to solve a problem, then they should bear some responsibility financially. No one has approached this developer to help with the infrastructure or purchase of land. This project is not done with just a little foresight. There are some

significant features. When they met with Linda Wilson and staff, they talked about connecting neighborhoods. Did it make sense to connect to Colonial Hills? No, not given the natural features. This is an attempt to get connectivity vehicularly over to Edgewood. We are trying to provide some relief for Colonial Hills to come down a bike path. We are trying to make this a community that says "new urbanism" in the effect that the area is all connected. To cut that in half, or slice it in any way, disrupts that. Staff brought in one of the speakers about "new urbanism". Otte approached the speaker and talked about taking a large community of homes and integrating them into a small area of new urbanism. The speaker suggested that that does not work. The connection being requested changes the character of this property.

Otte submitted proposed revisions to the conditions of approval. With regard to the declaration of surplus property, Otte contends that he never made an application to declare this as surplus property. That was pulled off pending without his knowledge. That was not an application this applicant made. If you want to turn it over to a homeowners association, that's fine. That letter requesting surplus was three years ago and Otte thought it went away. It was not part of this application with Black Forest Estates. Otte agreed that he sent the letter three years ago.

With regard to the Change of Zone from R-1 to R-3, Otte indicated that the applicant will accept R-2 zoning instead of R-3.

With regard to Special Permit 1786 and the preliminary plat, Otte requested the following:

- Delete Condition #1.1.1 which requires the roadway connection to Tanglewood.

- Revise Condition #1.1.2

- Revise Condition #1.1.3

- Delete Condition #1.1.7, which states that no final plat be approved until the plans for Edgewood and Pheasant Run have been revised and approved. Otte observed that the staff knows the developer is coming in with a final plat that is just a small piece of this entire project. To hold that piece up does not make sense and ignores the other city regulations that require two exits in and out. There are connection points, but to say they have to have one or all of those in place does not make sense because they are only going to develop 14 lots. The final plat for 14 lots is in process. The code requires those connections.

- Add Condition #1.1.12 regarding the grading and drainage plan. One of the comments by Public Works is that the grading should match the preliminary designs for the new Old Cheney Road. The applicant's position is that Old

Cheney Road should integrate with what they are doing. There is a tremendous mass of trees and if they meet those grading designs at this point in time and take out the trees, that is a tremendous loss. To impose this condition now is not appropriate. He believes they can work with staff without ripping out the trees in the first phase.

--add a condition to allow a street name change from Pheasant Run Lane.

--delete the requirement that the application not be scheduled on the City Council agenda until the revised documents and plans have been submitted. Otte contends that this pertains to minor issues with the exception of the road. If Olssons has to put in all the "nits and nats" right now before it gets to City Council, and then the City Council reverses what the Commission might do, the developer has gone through that expense and time unnecessarily. By the time they resubmit and staff reviews and gets it scheduled at Council, the developer has been caused some delay. Otte thinks the City Council can figure it out without seeing the resubmitted the plans.

Hunter recalled reading somewhere that the Pheasant Run development would not enter into an agreement for a connector road until there was a decision that there would not be a connecting road between Colonial Hills and Old Cheney. Are they willing to give a conditional agreement to make a connection with Black Forest based on the connecting road between Tanglewood and Old Cheney not happening? Otte responded, stating that the line that the representatives from Pheasant Run have now is that they are opposed to the roadway connection. They will not even commit that they can make this connection because they are fearful that if they give even a nod that the connection be made, that they have given up some rights that they have. The Pheasant Run neighborhood does not trust the city. Otte believes they can make the connection to Pheasant Run if the connection to Tanglewood goes away. Pheasant Run is delighted with the biker trail. They do not want a roadway connection. Hunter again inquired, "they would not have given you an agreement based on the fact that there would be no connection between Colonial Hills and Old Cheney?" Otte stated that they will not. They want to know what the city is going to do first. Otte agreed that there will have to be outlets for this development. One outlet will not serve this whole area.

Hunter inquired about what, if any, response the developer has had from Edgewood. Otte indicated that he has had conversations with Edgewood. The center is operated by a real estate company out of Chicago and these communications have been very slow.

Bayer suggested to Otte that if the Commission passes this the way the applicant is requesting, it be an island unto itself. This development could have no connection with the shopping center; no connection with Pheasant Run; and no connection with the neighborhood, so you have two connections with Old Cheney. You could have two paths

to Old Cheney Road. Otte stated that to be their least preferred option and concurred that they have no written agreements from Edgewood or Pheasant Run.

There was no testimony in opposition.

Newman asked staff to talk about the number of cars coming out of Elkcrest. Rick Haden of Public Works stated that the city has done some recent counts and today there are 3500 cars coming out on Elkcrest at 56<sup>th</sup>; 1400 at Antler Dr. coming out onto 70<sup>th</sup>; and about 1200 on Hickory Crest coming out onto Old Cheney to the south. We see that this road would have very little impact on Antler Drive coming out to the east; from Hickory Crest, we anticipate we would divert some 200-300 vehicles onto the new roadway depending on where it connects to Old Cheney Road; as far as 56<sup>th</sup> Street, we would envision around 400-500 vehicles diverted from Elkcrest over to the new roadway, so we would have maybe 700 vehicles diverted. The internal traffic volume is estimated at about 1500 vehicles coming out of the development itself without any connections to the neighbors with the one connection on Old Cheney. With the connection from Old Cheney over to Edgewood on Elkcrest, that would generate as many trips cutting through the neighborhood as the connection to the north connecting to Tanglewood.

Haden showed a map with potential routes. With the connection being requested, something similar to Hickory Crest could be done keeping the traffic to the people living in the immediate neighborhood. When the city acquired the lot and reserved it for a future roadway, the concern from Colonial Hills was that a lot of the traffic was traveling at higher speeds.

Duvall asked how many units the city is using as a multiplier for this development. Haden was using 150 units, assuming the outlots would also develop as residential, with 10 trips per unit average.

Newman asked if there are any improvement plans for 56<sup>th</sup> at Elkcrest. Haden stated that there is nothing in the CIP, but in the city's 20 year plan the city has identified a need for left turn lanes at 56<sup>th</sup> Street. It is not in the CIP because there are a lot of other projects ahead of it. It doesn't rank as high as some of the other improvements because of the condition of the pavement and capacity problems. He agrees that there is undoubtedly a need there.

Hunter inquired as to the distance between the stoplight at Vandervoort and the private drive going through the existing Carveth property. Hunter presumes that the city is not going to put another stop light another 150' down the road. If we're dumping 700 cars out of that, she is concerned. Haden stated that the distance would be about 600', but we would not want to put two signals that close together. 700 external trips would be less than Hickory Crest carries today and we envision a lot of those making a right turn.

Hunter commented that until 70<sup>th</sup> Street was finished, it probably was not used nearly as

much and probably is not used by Colonial Hills as much, but now that it is finished it will be carrying a lot more traffic eastbound. It was also noted that the access off of Elkcrest was predominately people heading to Gateway Mall and the future 70th Street is going to start carrying a lot more of that traffic. There may be more cars going east out of Colonial Hills than there are now.

Response by the Applicant

Otte believes that Dogwood Circle should have been part of planning. This plan has been hacked through a lot. He believes it represents good planning. He would like to go forward with the 14 lots.

As far as total number of lots, Otte explained that there are a couple of areas that are outlots and they just have not figured out what they intend to do with those. The big outlot will not be single family but it eventually may become some new urbanism with townhomes, single family, etc. They could be shown as townhomes and townhome densities, but they do not know how they are going to develop the outlots. Additionally, the increased density is through the use of granny flats—a lot of the lots will have ability to have an extra unit of about 1,000 sq. ft. so that a college kid or a granny can come live with the family. Those densities do bounce up a little bit, which is why they originally submitted R-3, but they have decided that R-2 will be appropriate. There will probably not quite be 150 lots, but it might get close. Phase one is 14 lots. Later on, they will develop the single family and multi-family but he does not know when.

Steward express his concern about the applicant's request about scheduling at City Council prior to submitting revised plans. This is impossible. Steve Henrichsen of Planning staff advised that to be a standard provision of any application that the Planning Commission has ever had before it. Those changes under the Site Specific conditions are required to be made before the project is scheduled on the City Council agenda so that the staff can look at the revised grading plan, sanitary sewer, water, etc. If there is a particular item such as showing the street connection, the applicant can appeal that condition to the City Council. However, it is appropriate that the City Council see the revised plans and that staff has the opportunity to look at the revisions before it goes to the City Council. It is a typical requirement.

Public hearing was closed.

**COMPREHENSIVE PLAN CONFORMANCE NO. 97002****ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 20, 1999

Upon further discussion, the applicant withdrew this application.

**CHANGE OF ZONE NO. 3198****ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 20, 1999

Newman moved to deny the change of zone, seconded by Steward.

Upon the question posed as to whether staff is also opposed to R-2 versus R-3, it was indicated that staff also recommends denial of R-2. The R-1 allows 150 dwelling units under a CUP. The application includes 52 single family lots, 36 accessory units and would allow 62 townhome units, so under the existing R-1 they could do those developments. The accessory units would be dwelling units that would be on the same lot with the main residence and would be less than 500 sq. ft. in area. The objection to R-2 is ultimate density. The developer's plan as presented does not require R-2 zoning. If greater density is thought of, Henrichsen advised that the staff believes it would be more appropriate that R-2 be approved at the time that development plan is in front of the Commission. This development plan fits the R-1 zoning.

Steward confirmed that under the stated phasing by the applicant, there would be opportunity for revision of the undeveloped property at a later time. Henrichsen concurred.

Hunter sought further clarification that if the R-1 zoning is left in tact, then they can do the development that is proposed right now. Henrichsen clarified that under the CUP they can do the multi-family.

Motion to deny carried 5-3: Steward, Krieser, Taylor, Newman and Bayer voting 'yes'; Duvall, Schwinn and Hunter voting no; Hopkins absent.

**SPECIAL PERMIT NO. 1786,**  
**BLACK FOREST ESTATES COMMUNITY UNIT PLAN**  
**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 20, 1999

Schwinn moved to approve the Planning staff recommendation of conditional approval, seconded by Steward.

Duvall moved to amend to delete Condition #1.1.1, which requires the roadway connection to Tanglewood Lane, seconded by Schwinn.

Schwinn believes this is pretty much the crux of the whole discussion we've had in two meetings for four hours. He has a stack of letters on one side of the issue and another stack on the other side of the issue. We've got testimony that this is new urbanism and testimony that it is not. We have testimony that it is good planning and that it is not good planning. The issue is connectivity. These neighborhoods have to be connected. There are too many things that can occur. The Pheasant Run people are being obstinate saying that they don't want to be involved. We're one community and we should all be involved. Schwinn will argue for the connectivity.

Newman agrees wholeheartedly and she thinks the developer can control what comes through and staff will work with them to help try to slow the traffic down.

Motion to amend to delete Condition #1.1.1 failed 2-6: Duvall and Hunter voting 'yes'; Schwinn, Steward, Krieser, Taylor, Newman and Bayer voting 'no'; Hopkins absent.

Duvall made a motion to amend to revise Condition #1.1.2, as requested by the applicant, seconded by Newman. Staff has said that this is acceptable. Motion carried 8-0: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Hopkins absent.

Duvall made a motion to amend to revise Condition #1.1.3, as requested by the applicant, seconded by Schwinn.

Newman recalled that staff wanted them to at least list the maximum number of units. Henrichsen believes it would be appropriate to have some kind of maximum units so that it is clear. Henrichsen suggested adding "include the maximum number of dwelling units" in the CUP. This was made part of the motion to amend. Motion carried 8-0: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Hopkins absent.

Duvall moved to amend to delete Condition #1.1.7, seconded by Schwinn. Since the Planning Commission did not delete Condition #1.1.1, this condition is no longer necessary. They will have two exits. There is no need to hold it up. We don't need the connection anymore to the east or west because we've approved the connection to the north. Motion to delete Condition #1.1.7 carried 8-0: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Hopkins absent.

Duvall moved to amend to add Condition #1.1.12, as requested by the applicant, seconded by Schwinn. Steward is concerned about this. While he understands and identifies with the action to save the trees, it seems to leave too much of an open-ended response just to eliminate "with regard to the Old Cheney Road right-of-way grading". Steward suggested an amendment that the grading and drainage should be revised as requested by Public Works, with a future match assured between the plan for Old Cheney Road right-of-way. His concern is that we do not now require the developer to do grading that is not matched up to anything else, but we may have to in the future. Bartels explained that right now, the city tries to get them to match the property line at grade so that the city can build the widening project. We would like to get the right-of-way as close as we think possible so that we do not have to buy extensive easements on developed lots. In this particular instance, Old Cheney Road is under design right now. His goal was for the developer to come in and talk to Public Works. The intent is to save as many trees as possible.

Schwinn believes that we should preserve the existing tree mass for as long as possible. Hunter wondered if there is any advantage of having a developer change the grading now

if the road project is not there. Bartels stated that Public Works would like to avoid spending public money building either massive regrading on people's yards in the future or spending public money to build expensive retaining walls. We are working at trying to do some shifting to save the trees. Schwinn thinks the city should make a commitment, too. Bartels agreed to work with the developer to save the maximum amount of trees.

Hunter suggested postponing a vote until the developer and Public Works can get together and come up with an agreement if there is a middle ground that is consistent with retaining the trees. If these people don't do that development for ten years from now, or ever, then we are ripping out a bunch of trees. Bartels suggested that if Dr. Carveth does not proceed with development, the city's project and some of the things the city is going to have to do will get there before he does. We are going to be forced to deal with that property.

It was suggested that Condition #1.1.12 be added as follows: "The grading and drainage plan shall be revised as requested by Public Works with an emphasis to maximize protection of existing tree masses on Old Cheney Road." This was accepted as the motion to amend.

Motion to amend adding Condition #1.1.12 carried 8-0: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Hopkins absent.

The applicant's request to add a condition to allow a street name change for Pheasant Run Lane was moved by Steward to be added as Condition #1.1.13, seconded by Hunter and carried 8-0: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Hopkins absent.

Main motion for conditional approval, as amended, carried 8-0: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Hopkins absent.

**PRELIMINARY PLAT NO. 99020**

**BLACK FOREST ESTATES**

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

October 20, 1999

Schwinn made a motion to approve the Planning staff recommendation of conditional approval, with the same amendments as approved by the Planning Commission on Special Permit No. 1786, seconded by Duvall and carried 8-0: Duvall, Schwinn, Steward, Hunter, Krieser, Taylor, Newman and Bayer voting 'yes'; Hopkins absent.

There being no further business, the meeting was adjourned at 4:15 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on November 3, 1999.

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